

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

**REPLY COMMENTS OF HORIZON CELLULAR TELEPHONE COMPANY**

Horizon Cellular Telephone Company ("Horizon") hereby submits the following Reply Comments in response to the above-captioned Notice of Proposed Rule Making<sup>1/</sup>

**I. INTRODUCTION**

The Commission has received comments from a large number of cellular CMRS providers, including Horizon, who strongly oppose the Commission's proposed extension of equal access obligations to independent cellular carriers at a time of such growth and expansion in the wireless marketplace. Equal access obligations were originally conceived as a way to mitigate landline LEC control over "bottleneck" local exchange facilities in order to promote the development of a competitive long distance market. These requirements make no public policy sense when applied to the competitive wireless marketplace. Small, independent cellular providers like Horizon control no access bottlenecks; they possess no market power; and they face the emergence of new and strong wireless competitors. Accordingly, Horizon believes that the Commission's proposed introduction of additional regulatory burdens and distortions into the CMRS marketplace is legally unsupported and contrary to the public interest.

<sup>1/</sup> See In the Matter of Equal Access and Interconnection Obligations Pertaining to commercial Mobile Radio Services, CC Docket No. 94-54, RM-8012, Notice of Proposed Rule Making and Further Notice of Inquiry (July 1, 1994) ("Notice").

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## II. DISCUSSION

In the initial round of comments, numerous CMRS providers weighed in to explain why there is no legal, policy or factual basis for imposing equal access requirements on cellular carriers. The record shows that:

- **Extending equal access obligations to independent cellular providers is unwarranted and unnecessary --**

It is difficult to comprehend the Commission's rationale for requiring independent cellular providers to incur the significant costs of implementing an equal access presubscription program. First, virtually all parties to this proceeding agree that cellular providers do not possess the control over access "bottlenecks" that was the primary justification for imposing equal access requirements in the landline context.<sup>2/</sup> Second, the Commission itself has acknowledged that "imposition of equal access obligations when the service provider does not possess market power may not be in the public interest."<sup>3/</sup> There is no persuasive evidence to suggest that cellular providers generally possess such market power; to the contrary, the Commission has acknowledged that facilities-based cellular carriers "are competing on the basis of market share, technology, service offerings and

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<sup>2/</sup> The equal access obligations currently borne by cellular affiliates of the Bell Operating Companies (BOCs) arose primarily as an interpretative byproduct of the AT&T divestiture decree rather than from thorough policy consideration of whether such obligations made sense in the wireless marketplace. That is the Commission's role here.

<sup>3/</sup> Notice at ¶ 34. Indeed, the Commission goes on to explain:

Such action can have unintended consequences which could detract from or undermine the potential benefits of imposing equal access. For example, the costs of implementing equal access may be so high that it could force some smaller carriers out of the market, thereby reducing competition. More important, competition alone in a particular market may compel carriers to offer choices their customers want without the need of regulatory intervention.

**Id.** These are some of the precise reasons that support not extending equal access obligations to smaller cellular providers like Horizon.

service price,"<sup>4/</sup> that "there is no indication that anticompetitive pricing is occurring,"<sup>5/</sup> and that sufficient competition exists in cellular service to justify Commission forbearance from Title II regulation.<sup>6/</sup> In particular, there is no way that smaller providers like Horizon can be said to have the kind of "market power" necessary to justify the onerous regulatory burdens and accompanying costs that equal access will engender. Finally, many parties have stressed the degree to which wireless competition to cellular is continually expanding, noting the rapid proliferation of other CMRS providers, including PCS and ESMR licensees. Horizon firmly believes that to the extent customers demand equal access presubscription capabilities (and there is little evidence that they do), government intervention to ensure its provision is unnecessary. The demand will be met by a dynamic CMRS marketplace.

■ **Equal access will impose large costs on independent cellular providers --**

Many parties, including Horizon, have documented in detail how the costs attending equal access implementation, e.g., modifying switching software, upgrading switches, upgrading types of interconnection, and generally overseeing the implementation and administration of a mandatory equal access presubscription program, will likely run into the hundreds of thousands and possibly millions of dollars for each provider.<sup>7/</sup> Such costs

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<sup>4/</sup> Cellular CPE Bundling Order, 7 FCC Rcd 4028, 4029 (1992).

<sup>5/</sup> Id. at 4034, n. 20.

<sup>6/</sup> CMRS Second Report and Order, 9 FCC Rcd at 1467; see Notice at ¶ 33.

<sup>7/</sup> See, e.g., Comments of Century Cellunet, Inc. (Sept. 12, 1994), at 2, 4-5 (estimating initial implementation costs of equal access at \$13,000,000); Comments of GTE (Sept. 12, 1994), at 17 (estimating cost of implementing equal access obligations to be in excess of \$23 million); Comments of the Rural Cellular Association (Sept. 12, 1994), at 6 (noting that most RCA member companies will be required to modify the software and/or hardware in their switches in excess of \$500,000 per switch and some may have to replace their switches at greater cost); Comments of Telephone and Data Systems, Inc. and United States Cellular Corporation (Sept. 12, 1994), at 5-6 (estimating total recurring yearly costs of equal access at \$780,000). See also Comments of BMCT, L.P., RM-8012 (Sept. 2, 1992), at 2-4 (equal access would

not only have the potential to raise subscriber prices,<sup>1/</sup> but also will diminish severely the amount of available capital that providers might otherwise invest in expanding their system coverage, implementing digital upgrades or otherwise improving their systems.<sup>2/</sup> These significant cost burdens are simply not justifiable from a public policy standpoint, given the utter lack of public interest benefits that will flow from equal access implementation.

■ **Equal access will impose large costs on cellular consumers --**

This is true not simply because customers may have to bear the short-term upgrade costs of equal access implementation. In the long term, customers will suffer because their long distance rates are likely to rise as a direct result of equal access implementation.

To begin with, it is extremely unlikely that equal access will reduce subscribers' long distance charges. Several parties have persuasively pointed to the "case study" of the BOC cellular affiliate experience -- where equal access has not resulted in

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cost approximately \$ 219,000 to implement for 3500 subscribers); Comments of the Cellular Telecommunications Industry Association, RM-8012 (Sept. 2, 1992), at 10-12 (equal access costs per subscriber would be higher than in the landline context); Comments of Telephone and Data Systems, RM-8012 (Sept. 3, 1992), at 2-4 (equal access implementation would cost approximately \$3.4 million initially and approximately \$700,000 per year in recurring costs); Comments of Vanguard Cellular Systems, Inc., RM-8012 (Sept. 1, 1992), at 4-6 & Exhibit 1, Declaration of Karen Garber (estimating Vanguard's equipment and related installation costs alone to be \$30,000 per market and \$630,000 overall, without even considering possible required cost of upgrading cellular switches in certain markets to "super nodes" at \$800,000 per switch location, and the additional cost of personnel to oversee implementation and administration of the obligation).

<sup>1/</sup> Unlike landline BOC telephone providers, for example, who can amortize the costs of equal access implementation across millions of customers, Horizon and similarly situated smaller providers must spread their costs over a much smaller subscriber base.

<sup>2/</sup> See, e.g., Comments of Century Cellunet at 6; Comments of OPASTCO (Sept. 12, 1994), at 3.

lower long distance rates for BOC cellular customers -- as evidence of this conclusion.<sup>10</sup> Instead, it is more likely that cellular customers' long distance costs will rise. As Horizon and other independent cellular providers have explained, MFJ-imposed equal access obligations simply are not tailored to fit the regional system clusters and expanded calling areas that have naturally evolved in response to the demands of mobile users. In particular, the imposition of equal access obligations will cause customers to lose the benefits of "wide-area" calling, which enables them to enjoy "local" toll-free service for calls that would otherwise be classified as long distance toll calls on the landline telephone network.

In addition, equal access will cause customers to lose the benefits of extremely favorable volume discounts and other special arrangements with particular IXC's that independent cellular providers can negotiate because they have the buying power to do so. Independent cellular providers are able to pass the benefits of those discounts through to consumers, either directly in the form of price decreases, or indirectly through network upgrades, expanded calling areas or innovative service packages made possible by this savings. These benefits will be lost once equal access is implemented.

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<sup>10</sup> See, e.g., Comments of NYNEX (Sept. 12, 1994), at 4 ("It is NYNEX's experience that equal access has not resulted in lower long-distance rates for cellular consumers."); Comments of Southwestern Bell (Sept. 12, 1994), at 29 ("In effect, MCI uses equal access and the lack of price competition in the long distance market to force the individual cellular long distance customer to subsidize the large customers."); Comments of Vanguard Cellular Systems, Inc. (Sept. 12, 1994), at 14 & Attachment 1, Statement of Professor Jerry A. Hausman (Sept. 9, 1994), at ¶¶ 25-23 (Hausman Statement). Professor Hausman explains that although AT&T has significantly lower access costs in the cellular as opposed to the landline telephone context, it charges BOC cellular customers the same price as landline long distance customers. Because no meaningful competition among the IXC's exists for BOC cellular traffic, AT&T and other IXC's are not constrained by competition to pass the lower cellular access costs through to customers in the form of lower long distance prices. To the contrary, because the ability of cellular companies like Vanguard to buy long distance service in bulk will be eliminated by equal access, Professor Hausman predicts that non-BOC cellular long distance prices will also increase since the cellular companies' marginal costs will rise. Hausman Statement at ¶ 33.

Weighed against such significant costs, Horizon believes that the claimed benefits of equal access implementation are illusory. For example, the argument made by interexchange carriers -- who not coincidentally stand to reap a tremendous windfall from the Commission's proposal -- that equal access is necessary to promote customer choice does not withstand scrutiny. Virtually every customer in fact can have equal access capability if he or she desires it by virtue of the presence of a BOC-affiliated carrier in most cellular markets.<sup>11/</sup> More important, virtually all independent cellular providers currently provide access to the customer's cellular carrier of choice through 800, 950, or 10XXX arrangements. Although it is correct that customers are not uniformly offered the ability to presubscribe to their carrier of choice, the record contains virtually no evidence that customer demand is sufficient to warrant the imposition of tremendous costs simply to accommodate the customer option of presubscription.<sup>12/</sup> Indeed, because 10XXX dialing can be programmed into most handsets today as a digital speed dialing option, such an arrangement is effectively equivalent to "1+" presubscription dialing.<sup>13/</sup> "Consumer

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<sup>11/</sup> According to CTIA, approximately 95% of the population in the nation's 50 largest markets enjoys the option of choosing BOC-affiliated cellular service. See Comments of CTIA (Sept. 12, 1994), at 11. As CTIA correctly points out, independent cellular providers have been competing successfully with BOC-affiliated providers for years in spite of not offering equal access presubscription. If equal access were truly desirable in particular markets, these carriers would implement it to maintain their competitive position. *Id.*

<sup>12/</sup> See, e.g., Comments of Airtouch (Sept. 12, 1994), at 4 ("Extensive surveys, focus groups, and secondary market research led us to conclude that most customers simply want the lowest overall monthly charges possible, wide area coverage, a single bill, and quality connections. The ability to select any long distance carrier generally had little value to most customers."); Comments of CTIA (Sept. 12, 1994), at 11 (observing that "there appears to be no measurable demand by consumers of unaffiliated cellular carriers to offer equal access"; Comments of Southwestern Bell (Sept. 12, 1994), at 33 (discussing customer survey where choice of long distance carrier was rated least important factor among various options).

<sup>13/</sup> *Id.* at 8.

choice" is simply not a rationale that remotely justifies the magnitude of the regulatory action the Commission has proposed.

In the final analysis, the Commission's proposed intervention in the CMRS marketplace will simply operate to redistribute revenue from independent cellular operators -- including the small and medium-sized providers who can least afford it -- to the large IXC's. This result is not in the public interest.

Finally, a word on interconnection issues. Horizon generally agrees that with respect to LEC-to-CMRS provider interconnection arrangements, the CMRS market would be better served by retention of the current practice of good faith negotiations rather than tariffs. The CMRS marketplace must feature the necessary flexibility to accommodate the rollout of a constantly evolving set of new wireless services. Negotiated interconnection arrangements are far more likely than tariffs to achieve this goal, and to adapt flexibly to CMRS' providers evolving needs for new forms of interconnection. The same principle holds true for mandating CMRS-to-CMRS interconnection or switch-based interconnections with cellular resellers. At present there is no empirical or theoretical justification for imposing such obligations, and it is likely that regulatory intervention by the Commission will promote inefficient interconnections, or distort investments in the rapidly expanding and changing market for mobile services. For smaller providers like Horizon, for example, the imposition of unwarranted and burdensome interconnection obligations, in a manner similar to equal access obligations, would likely further decrease the limited capital that these

providers would otherwise invest in their systems, ultimately degrading the quality of service that subscribers would otherwise obtain in the absence of regulatory intervention.

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In sum, Horizon believes that equal access obligations have little meaning or utility in the present, competitive wireless marketplace. In the end, the only beneficiaries of equal access will be the interexchange carriers -- and their benefits will be reaped at the expense of cellular providers and cellular customers with no corresponding public interest gain. The Commission should reject its tentative decision to burden independent cellular carriers in this fashion.

Respectfully submitted,

Horizon Cellular Telephone Company

A handwritten signature in black ink, appearing to read "James F. Rogers", is written over a horizontal line.

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